



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 26, 1996

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR96-0244

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34036.

The Texas Department of Criminal Justice (the "department") received a request for a copy of all "E.E.O. information," an interview on April 12, 1994 with the requestor, and "a copy of all information the department may have on file under [the requestor's] name, which was on file with legal affairs." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public

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<sup>1</sup>Although the department originally claimed that the requested information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code, the department did not offer any arguments as to why these exceptions would apply to any of the requested information. Therefore, the department did not meet its burden of establishing that these exceptions applied to the requested information. See Gov't Code § 552.301.

when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

In previous Open Records Decisions, this office has concluded that the release of lists of persons who visit inmates and persons who correspond with inmates violate the inmates' constitutional right of privacy under section 552.101 of the Government Code. Open Records Decision Nos. 430 (1985) (visitor lists), 428 (1985) (correspondence logs), 185 (1978) (same). Therefore, the department must withhold the inmate's visitor's log and correspondence. Similarly, the common law privacy right protects financial records relating to inmate trust accounts. Open Records Decision No. 396 (1983). We have marked the documents to indicate inmate trust account information that must be withheld under the inmate's common law privacy right as incorporated by section 552.101 of the Government Code.

You contend that section 552.108 of the Government Code excepts the information that would identify inmate complainants, victims, and witnesses from required public disclosure. Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . ." This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records

Decision No. 434 (1986) at 3. You argue that inmate informants will be subject to harassment and retaliation by prison staff and by other inmates. We believe you have demonstrated that releasing information that identifies or would tend to identify inmate informants would unduly interfere with law enforcement and crime prevention. Accordingly, the department may withhold the information that we have marked under section 552.108 of the Government Code. However, the department may not withhold the remainder of the submitted information under section 552.108.<sup>2</sup>

Texas law prohibits the public disclosure of the results of polygraph examinations. V.T.C.S. art. 4413(29cc). However, no polygraph examination results were submitted to this office for review. A refusal to take a polygraph examination is not "information acquired from a polygraph examination." under the statute. Therefore, the department may not withhold this document. However, as the document reveals the name of an inmate informer, the department may withhold the inmate's identity under section 552.108.

We note that there is a court order in the submitted documents. As this document is filed in the court records and consequently open to the public, the department may not withhold it.

Finally, you claim that section 552.117 protects some of the information you submitted for review. Section 552.117(2), in pertinent part, excepts from disclosure "the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice . . ."<sup>3</sup> The information you submitted for review contains the social security numbers of some department employees other than the requestor. You must withhold this information. However, except as noted above, the department must release the remainder of the information.<sup>4</sup>

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<sup>2</sup>You claim that section 552.108 excepts from disclosure the information submitted as OI-05. However, this case does not appear to be on-going, and the documents do not show on their face how their release would unduly interfere with law enforcement or crime prevention, nor has the department made this explanation. Other than information that would tend to identify inmate victims or witnesses, the department may not withhold these documents under section 552.108.

<sup>3</sup>We note that this subsection was amended in the most recent legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132 (Vernon). As the department received the request that is the subject of this ruling before September 1, 1995, we apply the prior law to this request and do not address how the amendment will affect requests received by the department on or after September 1, 1995. *See id.* § 26, 1995 Tex. Sess. Law Serv. at 5142.

<sup>4</sup>Although the information indicated must be released to this requestor, we note that some of the information at issue may not be publicly released. Gov't Code § 552.102 (public employee has special right of access to information in own personnel file). If the department receives a subsequent request for these same documents, we suggest that the city re-submit to this office the documents and the city's arguments as to why the documents are excepted from disclosure. This office will consider those arguments at that time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 34036

Enclosures: Marked documents

cc: Ms. Iris DeHoyos  
(w/o enclosures)